

Extraordinary Meeting of Future Nillumbik Committee

to be held virtually
on Monday 21 September 2020 commencing at 7.00pm.

Agenda

Carl Cowie
Chief Executive Officer

Thursday 17 September 2020

Distribution: Public

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Extraordinary Meeting of Future Nillumbik Committee

Councillors

Cr Karen Egan (Mayor) – Bunjil Ward

Cr Jane Ashton – Sugarloaf Ward

Cr Grant Brooker – Blue Lake Ward

Cr Peter Clarke – Wingrove Ward

Cr John Dumaresq – Edendale Ward

Cr Peter Perkins – Ellis Ward

Nillumbik Shire Council notes the resignation of Swipers Gully Ward Councillor Bruce Ranken effective 28 August 2020.

Officers

Carl Cowie – Chief Executive Officer

Blaga Naumoski – Executive Manager Governance, Communications and Engagement

Extraordinary Meeting of Future Nillumbik Committee Agenda 21 September 2020
Nillumbik Shire Council

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Nillumbik Shire Council

Agenda of the Extraordinary Meeting of Future Nillumbik Committee to be held

Monday 21 September 2020 commencing at 7.00pm

1. Welcome by the Chair

Members of the public are advised the meeting will be livestreamed and recorded and the livestream and video recording will be made publicly available on YouTube and Council's website.

2. Reconciliation statement

The reconciliation statement to be read by the Chairperson

Nillumbik Shire Council acknowledges the Wurundjeri people who are the Traditional Custodians of this Land. We would also like to pay respect to the Elders both past and present and extend that respect to other Indigenous Australians present.

3. Apologies

Recommendation

That the apologies be noted.

4. Confirmation of minutes

Confirmation of minutes of the Future Nillumbik Committee Meeting held on Tuesday 8 September 2020.

Recommendation

That the minutes of the Future Nillumbik Committee Meeting held on Tuesday 8 September 2020 be confirmed.

5. Disclosure of conflicts of interest

Committee members should note that any conflicts of interest should also be disclosed immediately before the relevant item.

6. Officers' reports

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

Portfolio: Planning

Distribution: Public

Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety

Author: Tyson McAdie, Principal Planner

Application summary

Address of the land	26 Warringah Crescent, Eltham
Site area	4,129m ²
Proposal	Three (3) lot subdivision, removal of native vegetation and buildings and works to construct a driveway
Application number	153/2020/14P
Date lodged	22 April 2020
Applicant	Webster Surveying
Zoning	Neighbourhood Residential Zone (Schedule 1)
Overlay(s)	Significant Landscape Overlay (Schedule 2) Environmental Significance Overlay (Schedule 1)
Reason for being reported	Called in by Ward Councillor.
Number of objections	10 (ten)
Key issues	<ul style="list-style-type: none"> • Strategic Location; • Neighborhood Character; • Vegetation removal and vegetation impacts; • Response to Clause 52.17 (Native Vegetation) and the Environmental Significance Overlay (Schedule 1) • Compliance with Clause 56 (ResCode); • Private Open Space Contribution; and • Bushfire.

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FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

Location map



6. Officers' Report

FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

Recommendation

That the Committee (under delegation from Council) issue a Notice of Decision to Grant a Permit to the land located at 26 Warringah Crescent, Eltham, for the Three (3) lot subdivision and the removal of native vegetation, in accordance with the submitted plans and subject to the following conditions:

1. Before the plan of subdivision is certified under the Subdivision Act 1988, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by Whiteman Property Group, but modified to show:
 - a) Dimensioned Tree Protection Zones for tree no's. 24, 51, 61, 64 & 68.
 - b) A notation that the intrusion of any works, including earthworks and retaining walls, into the Tree Protection Zone of Tree no. 61 will not exceed 15%.
 - c) A notation that the intrusion of any works into the Tree Protection Zone of Trees no's. 64 & 68 will not exceed 10%.
 - d) The provision of a Tree Management Plan in accordance with conditions of this permit.
 - e) The provision of Tree Protection Fencing in accordance a condition of this permit.
 - f) Provision of vegetation offsets in accordance with Conditions of this permit.
 - g) The deletion of the proposed crossover to Lot 2.
 - h) The provision of a common property area over the existing driveway to be located in proposed Lot 1 to provide vehicle access to Lots 1 & 2 to the satisfaction of the Responsible Authority
 - i) The provision of a driveway envelope for Lot 2 which does not intrude into the Tree Protection Zones of Tree no. 61 by more than 15% and Tree no's. 64 and 68 by more than 10%.
 - j) The location of all trenches services.
2. The subdivision as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
3. The tree removal as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
4. Only trees marked "tree to be removed" on the endorsed plans are permitted to be removed, to the satisfaction of the Responsible Authority.
5. No vegetation on-site, unless specified on the endorsed plans, shall be removed, destroyed, felled, lopped, ringbarked, uprooted or otherwise damaged except with the prior written consent of the Responsible Authority.

6. Officers' Report

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6. Any tree that is shown on the endorsed plan as being pruned, must be pruned under the supervision of a qualified arborist, to the satisfaction of the Responsible Authority.

7. Prior to any subdivisional works commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the following must be provided to the satisfaction of the Responsible Authority:

a) The trees number 24, 51, 61, 64 & 68 marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the Responsible Authority. The fencing associated with this Tree Protection Zone must meet the following requirements:

i) Extent

The tree protection fencing is to be provided to the extent of the identified Tree Protection Zone.

If works are shown on any endorsed plan of this permit within the confines of the calculated Tree Protection Zone, then the Tree Protection Fencing must be taken in to only the minimum amount necessary to allow the works to be completed.

ii) Fencing

All tree protection fencing required by this permit must be erected in accordance with the approved Tree Protection Zone.

The Tree Protection Fencing must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.

iii) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing clearly stating "Tree Protection Zone – No Entry", to the satisfaction of the Responsible Authority.

iv) Irrigation

The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

v) Provision of Services

All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any Tree Protection Zone, wherever practically possible. If underground services are to be routed within an established Tree Protection Zone, they must be installed by directional boring with the top of the bore to be a minimum depth of 600mm below the existing grade, to the satisfaction of the Responsible Authority.

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Bore pits must be located outside of the Tree Protection Zone or manually excavated without damage to roots, to the satisfaction of the Responsible Authority.

vi) Access to Tree Protection Zone

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

- b) A Tree Protection Plan (drawing) and Tree Management Plan (report) must be submitted to and be endorsed by the Responsible Authority. The Tree Management and Protection Plans must be specific to tree numbers 24, 51, 61, 64 & 68. The Tree Management and Protection Plans must be in accordance with AS4970-2009, prepared by a suitably qualified arborist and provide details of tree protection measures that will be utilised to ensure all trees to be protected remain viable post-construction.

The Tree Protection Plan (drawing) must be drawn to scale, appropriately notated and reference the Tree Management Plan (report) and provide details of:

- i. The Tree Protection Zone and Structural Root Zone for tree numbers 24, 51, 61, 64 & 68, calculated in accordance with AS4970-2009, for all trees to be retained on site and on neighbouring properties where the Tree Protection Zone falls partially within the subject site.
 - ii. Tree protection fencing, or ground protection where required, provided in accordance with AS4970-2009.
 - iii. Any other specific measures such as site access points or material storage areas as required in the Tree Management Plan (report)
- c) The Tree Management plan (report) must be prepared by a suitably qualified arborist, reference the Tree Protection Plan (drawing) and provide details of:
- i. Any non-destructive root investigation previously undertaken or as directed as a condition of this permit in accordance with AS4970-2009 to determine the location and distribution of roots of trees nominated on the Tree Protection Plan.
 - ii. Proposed footings and construction methods for any buildings or structures (including but not limited to, driveways, paths retaining walls or other hard infrastructure) within the Tree Protection Zones nominated on the Tree Protection Plan.
 - iii. Details of suitable driveway materials and construction methods (i.e. permeable paving above grade) and the timing of works within the tree protection zones.

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- iv. How excavation impacts, including soil level changes, within the Tree Protection Zones of trees to be retained will be managed or minimised.
- v. Stages of development at which inspections are required to ensure tree protection measures are adhered to must be specified.
- vi. Appropriate methods of certification by a suitably qualified Arborist of the required tree protection measures during the development including details of site visits, actions and photographic evidence
- vii. Appropriate signage on any tree protection fencing
- viii. Ongoing maintenance during construction of the tree protection measures.
- ix. Any pruning to be undertaken being in accordance with AS4373-2007-Pruning of Amenity Trees
- x. How the canopy of trees nominated on the Tree Protection Plan will be protected or managed;
- xi. Any other measures required to demonstrate the successful ongoing retention and viability post-construction of any trees nominated on the Tree Protection Plan;
- xii. Plans to show the Tree Number; the Structural Root Zone (SRZ) radius and the Tree Protection Zone radius, for tree numbers 24, 51, 61, 64 and 68 as detailed and calculated within the arborist report by Stem Arboriculture dated 18 December 2019; and
- xiii. Plans to demonstrate that the drainage infrastructure can be installed without impacting tree numbers 61, 64 and 68, and be in accordance with the submitted Tree Protection Plan to the satisfaction of the Responsible Authority.

8. Prior to the commencement of the approved works (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the erected tree protection fences must be inspected and approved by the Responsible Authority.

Once erected to the required standard, the tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.

9. The following actions must not be undertaken in any tree protection zone as identified in this permit, to the satisfaction of the Responsible Authority:
- a) Materials or equipment stored within the zone;
 - b) Servicing and refuelling of equipment and vehicles;
 - c) Storage of fuel, oil dumps or chemicals;

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- d) Attachment of any device to any tree (including temporary service wires, nails, screws or any other fixing device);
 - e) Open cut trenching or excavation works (whether or not for laying of services);
 - f) Changes to the soil grade level;
 - g) Temporary buildings and works; and
 - h) Unauthorised entry by any person, vehicle or machinery.
10. Prior to a Statement of Compliance being issued for any stage of the subdivision under the *Subdivision Act 1988* the following must be completed to the satisfaction of the Responsible Authority:
- a) Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. The owner agrees that unless with the prior written consent of the Responsible Authority, the agreement must provide:
 - i. No native vegetation located outside of the approved building and driveway envelopes is to be removed, lopped or destroyed unless with the prior written consent of the Responsible Authority.
 - ii. No building or works are to occur outside of the approved building and driveway envelopes unless with the prior written consent of the Responsible Authority.
 - iii. Any future development applications on Lots 2 and 3 must be accompanied by a Landscape Plan utilising indigenous species, prepared to the satisfaction of the Responsible Authority.
 - iv. Any demolition, tree removal and future development of the lots must be carried out in accordance with the Tree Management Plan endorsed with this planning permit.

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act prior to the commencement of the development and/or use.

- b) To offset the removal of 0.352 hectares of native vegetation and three large trees the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified below:
 - A general offset of 0.066 general habitat units: located within the Port Phillip & Westernport Catchment Management Authority boundary or Shire of Nillumbik municipal district with a minimum strategic biodiversity value of at least 0.208.
 - The offset(s) secured must provide protection of at least 3 large trees.The offset provided must be to the satisfaction of the Responsible Authority.

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- c) Before the Statement of Compliance for the subdivision is issued, evidence that the required offset has been secured must be provided to the satisfaction of Council. This evidence is one or both of the following:
- An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site and/or
 - Credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

- d) In the event that a security agreement is entered into, the applicant must provide the annual offset site report to the Responsible Authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of the Responsible Authority.
- e) The owner must pay to Council a 2% cash-in-lieu open space contribution in respect to all of the land in the subdivision *or any stage* pursuant to Section 18 of the *Subdivision Act 1988*
- f) Vehicular access and egress to each lot from the roadway must be by way of a vehicle crossing constructed to the requirements of the Responsible Authority, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an *Infrastructure Works permit*.
- g) An on-site detention device must be installed for each lot on the plan of subdivision, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet for each lot on the plan of subdivision must be connected to the agreed point of storm water discharge for each lot

The width of the driveway at the property boundary must match the width of the vehicle crossing.

Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works permit.

Each lot shown on the plan of subdivision shall be drained in accordance with the plans and specifications endorsed by the Responsible Authority.

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Prior to issuing a Statement of Compliance the drainage works must be completed to the satisfaction of the Responsible Authority.

11. A legal point of Stormwater discharge is to be provided for each lot on the Plan of Subdivision (submitted with the application) created. This may require a drainage easement in favour of the existing dwelling to be created through either lot 2 or 3 in favour of lot 1. This can be determined by a suitably qualified engineer.

For each lot created, including the existing dwelling, an on-site detention device must be created, based on the assumption that the building envelope will be covered by an impervious surface.

12. The on-site detention devices shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval (prior to the commencement of the development unless with the prior written consent of the responsible authority).

The engineer that is designing the on-site detention device must obtain **tc** and **tso** figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event.

Such plans must be designed to minimise damage to existing vegetation required to be retained on-site, and the construction work must be carried out in accordance with the approved plans.

Each lot shown on the plan of subdivision shall be drained in accordance with the plans and specifications endorsed by the Responsible Authority.

Telecommunication Conditions

13. The owner of the land must enter into an agreement with:

- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

14. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:

- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards

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set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

APT Conditions

15. Easements in favor of "Australian Gas Networks (VIC) Pty Ltd" must be created on the plan to the satisfaction of APT.
16. The plan of subdivision submitted for certification must be referred to APT O&M Services Pty Ltd, in accordance with Section 8 of the Subdivision Act 1988.

Yarra Valley Water Conditions

17. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water services.
18. The owner of the land must enter into an agreement with Yarra Valley Water for the provision of sewerage services.

AusNet Condition

19. The plan of subdivision submitted for certification must be referred to AusNet Electricity Services Pty Ltd in accordance with Section 8 of the subdivision Act 1988.
20. The applicant must –
 - Enter into an agreement with AusNet Electricity Services Pty Ltd for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision. A payment to cover the cost of such work will be required.
 - Provide electricity easements internal and external to the subdivision in favour of AusNet Electricity Services Pty Ltd to service the lots on the plan of subdivision and/or abutting lands as required by AusNet Electricity Services Pty Ltd. The provision of reserves for electricity substations may also be required.

Expiry Condition

21. This permit will expire if one of the following circumstances applies:
 - a) A plan of subdivision is not certified within two years of the issue date of this permit; or
 - b) A plan of subdivision is not registered at Land Victoria within five years of the original certification date.

The Responsible Authority may extend the permit if a request is made in writing prior to expiry of the permit or within six months afterwards.

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Notes:

During the course of the approved construction work, a copy of this permit and the endorsed plan(s) must be kept on-site and made available for inspection by Council officers.

Failure to undertake the requisite tree protection fencing in accordance with the conditions of this permit will result in the issuing of Planning Infringement Notices to the land owner, occupant (if this is a different person), and the person or company undertaking the works on-site. The minimum penalty on the Planning Infringement Notice for land owners and occupants will be \$826 for the land owner and occupant, and \$1652 for any company which may be undertaking works on-site.

Prior to tree removal a suitably qualified and experienced wildlife handler should assess the trees to be removed and to relocate any fauna present. They should also be present during works to minimise impacts on wildlife.

Attachments

1. Aerial map
2. Site and surrounds
3. Plans
4. Planning report
5. Native Vegetation Impact Assessment
6. Arboricultural Assessment Report

Subject site and surrounds

1. The key features of the subject land and surrounds are as follows:
 - The subject site is particularly described as Volume 08049 Folio 875.
 - The subject site is located to the southern side of Warringah Crescent which is a circular road and links with Ramptons Road to the north-west and Laurison Road to the north-east of the site. The southern section of the road is unmade.
 - The subject site is square in shape and has a 58 metre of frontage to Warringah Crescent. The east and west boundaries are 72 metres in length, giving the site an overall area of 4,129 square metres.
 - The site is occupied by a split level brick dwelling located at a setback of 18 metres from Warringah Crescent, 15 metres from the eastern boundary and 22 metres from the western boundary.
 - The site slopes down as viewed from Warringah Crescent. The application nominates two points of vehicle access to the site. The access to the west is the formal vehicle access to the site and the access point nominated to the east of the site is informal, unconstructed and not in regular use.

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- The rear of the subject site comprises native canopy trees with no understory vegetation.
- Post and wire fencing is located to the rear boundary, the side boundaries do not comprise any fencing.

The key features of the surrounds are as follows:

- The southern section of Warringah Crescent comprises lot sizes similar to that of the subject site. Single dwellings are prevalent as is the existing vegetation cover.
- The northern section of Warringah Crescent, which is reflected as the sealed section of the road, comprises smaller more traditional residential lot sizes.
- Post and wire fencing is a prevalent feature of the surrounding area.

Details of proposal

2. Refer to the attached plans.
3. The proposal seeks to subdivide the land into three lots, remove native vegetation and carry out buildings and works to construct a driveway.

Subdivision:

Lot 1:

- Proposed lot 1 will comprise the existing dwelling on the site and will be accessed via the existing driveway.
- Proposed lot 1 is to have an overall area of 1,435 square metres.

Lot 2

- Proposed lot 2 is to be located to the south-west corner of the site and will have a 'battle axe' configuration from Warringah Crescent.
- The lot will be accessed via a new crossover from Warringah Crescent to the western end of the site.
- Proposed lot 2 will have an overall area of 1,390 square metres and a building envelope to be 460 square metres in area.

Lot 3

- Lot 3 is proposed to the south-east corner of the site and will have a 'battle axe' configuration from Warringah Crescent.
- The lot will be accessed from Warringah Crescent with a driveway to be constructed along the eastern side of the existing dwelling.
- The lot will have an overall size of 1,350 square metres with a 479 square metre building envelope.

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Vegetation removal:

4. To facilitate the proposed vehicle access and building envelopes on the site, the following vegetation requires planning permission to be removed from the site as identified in the Arboricultural Assessment prepared by Stem Arboriculture:

Tree No.	Common Name	Botanical Name
4	Cherry Ballart	<i>Exocarpos cupressiformis</i>
5	Cherry Ballart	<i>Exocarpos cupressiformis</i>
11	Long Leafed Box	<i>Eucalyptus goniocalyx</i>
12	Long Leafed Box	<i>Eucalyptus goniocalyx</i>
13	Long Leafed Box	<i>Eucalyptus goniocalyx</i>
18	Long Leafed Box	<i>Eucalyptus goniocalyx</i>
19	Long Leafed Box	<i>Eucalyptus goniocalyx</i>
20	Yellow Box	<i>Eucalyptus melliodora</i>
34	Yellow Box	<i>Eucalyptus melliodora</i>
45	Long Leafed Box	<i>Eucalyptus goniocalyx</i>
46	Yellow Box	<i>Eucalyptus melliodora</i>
47	Blackwood	<i>Acacia melanoxylon</i>
49	Yellow Box	<i>Eucalyptus melliodora</i>
62	Black Wattle	<i>Acacia mearnsii</i>
63	Candlebark	<i>Eucalyptus rubida</i>

5. In accordance with the requirements of Clause 52.17 (Native Vegetation), the submitted Flora and Fauna Assessment and Native Vegetation Assessment prepared by Practical Ecology has identified the following vegetation losses:

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Table 12. Summary of native vegetation to be removed

Summary Item	Result
Assessment pathway	Intermediate
Total extent	0.352 ha
Remnant patches	0.352 ha
Large trees within remnant patch	3
Scattered Trees (small)	0
Scattered Trees (large)	0
Location category	1
Strategic biodiversity value score of all marked native vegetation	0.260

6. The following offsets are identified:

Offset type	Offset requirements	
	Offset amount	Offset attributes
General	0.066 general habitat units	<ul style="list-style-type: none"> Offset must be within Port Phillip and Westernport Catchment Management Authority CMA or Nillumbik Shire Council Offset must have a minimum strategic biodiversity value of 0.208 3 large trees

Planning history

7. There is no relevant planning history with respect to the subject site.

Zoning

8. Under the Neighborhood Residential Zone (Schedule 1) a planning permit is required pursuant to Clause 32.09-3 to subdivide the land into three (3) lots.

Overlays

9. Under the Significant Landscape Overlay (Schedule 2) a planning permit is not required for subdivision, however a permit is required for the removal of native vegetation and to carry out any buildings and works within 5 meters of substantial native vegetation.

10. Under the Environmental Significance Overlay (Schedule 1) a planning permit is required to remove vegetation and to carry out buildings and works to construct a driveway. A planning permit is also required for subdivision.

11. Under the provisions of both the Significant Landscape Overlay (Schedule 2) and the Environmental Significant Overlay (Schedule 1), a planning permit is required to remove trees numbered 4, 5, 11, 12, 13, 18, 19, 20, 34, 45, 46, 47, 49, 62 and 63.

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Particular provisions

12. Under the provisions of Clause 52.17 (Native Vegetation), a permit is required to remove, destroy or lop native vegetation on land which, together with all contiguous land in one ownership has an area greater than 0.4 hectares. The purpose of this provision is to ensure permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity. This is achieved through the following approach:

- Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
- Minimise impacts on Victoria's biodiversity from the removal of native vegetation.
- Where native vegetation is permitted to be removed, ensure that an offset is provided in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.
- To manage native vegetation to minimise land and water degradation.
- To manage native vegetation near buildings to reduce the threat to life and property from bushfire.

The subject site is in excess of 0.4 hectares and a planning permit is required to remove any native vegetation from the site.

13. Residential subdivision must meet the relevant requirements of Clause 56 (commonly known as 'ResCode'. The requirements of what clauses need to be met are outlined under Clause 32.09 (Neighbourhood Residential Zone) of the Nillumbik Planning Scheme.

14. Clause 65 (Decision Guidelines) outlines general decision guidelines that must be considered when assessing an application. These guidelines include the purpose of the zone or other provision, the orderly planning of the area, and the effect on the amenity of the area.

Relevant planning policies

15. State Planning Policies which are relevant to this application include:

- Clause 12.05-2S Landscapes
- Clause 13.02 Bushfire
- Clause 15.01-5 Urban design principles
- Clause 15.01.2S Building Design
- Clause 15.01-5 Neighbourhood character
- Clause 16.01S Integrated Housing
- Clause 16.01.2S Location of Residential Development
- Clause 16.01.3S Housing Diversity

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16. The Local Planning Policies which are relevant to this application include:

- Clause 21.05-1 Settlement and Housing
- Clause 21.05-3 Environment, Conservation & Landscape
- Clause 22.12 Neighbourhood Character Policy

Policy context

17. The Municipal Strategic Statement (MSS) contains an objective to encourage medium density housing with good access to commercial and community services, public transport, open space and other infrastructure, and to discourage medium density housing where access to these facilities is inadequate. This objective is given more direct effect in the Medium Density Housing Policy at Clause 22.01, which encourages medium density housing development to be located close to activity centres or other urban services. Whilst 22.01 is not applicable to the consideration of a three lot subdivision, it is appropriate to consider whether the site is suitable for additional development should additional lots be approved.
18. The encouragement afforded by the zone and planning policies is counter-balanced by objectives that require future subdivision and development to be site responsive (i.e. minimise landscape and vegetation impacts), and promoting a built environment that is complementary to desired neighbourhood character.
19. Assessment of the degree of policy support for residential subdivision is dependent upon a balancing of these sometimes contradictory policy objectives.

Public consultation

Advertising

20. The application has been advertised by way of the posting of notices to the owners and occupiers of neighbouring properties and the erection of a notice on-site.

Objections

21. As a result of advertising, a total of 10 written objections have been received. These objections can be summarised as follows:
- The proposed subdivision does not respect the existing or preferred neighborhood character;
 - The proposed subdivision will create a precedent for future subdivisions;
 - The intensity and scale of the proposal is not appropriate with regard to the existing area;
 - The proposed tree removal is not appropriate;
 - Future dwellings on the site will penetrate the tree canopy and will not comply with the preferred neighborhood character;
 - Proposed tree removal will result in loss of habitat for birds and wildlife and will negatively impact the wildlife corridor;
 - The provision of services will impact the health of existing trees;

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- The existing road is not sealed and additional traffic will lead to deterioration of the road and create more dust for existing residents;
- The additional traffic will create a hazard for vehicles entering and exiting on Warringah Crescent;

Planning application conference

22. No planning application conference was held for this application due to the current State of Emergency in effect.

Referrals

Internal

23. The application was referred to various business units or individuals within Council for advice on particular matters. The following is a summary of the relevant advice:

Council Unit	Comments
Consulting Arborist	No objection subject to the provision of Tree Protection Zones and the submission of a Tree Management Plan should a permit be issued.
Infrastructure Department	No objection subject to drainage and vehicle access conditions.
Environmental Planning Officer	<p>The site is covered by Environmental Significance Overlay (Schedule 1) as this local area contains larger lots containing remnant vegetation. This provides a habitat link in the landscape joining larger remnant vegetation in the south at Meruka Park, with patches to the east extending along Diamond Creek.</p> <p>This area has been significantly modified over the past few years with recent subdivision reducing the overall value of the vegetation as habitat. The area still supports local avifauna, possums and a range of common fauna.</p> <p>The subject site contains a good cover of remnant canopy trees with a modified understorey resulting from years of mowing. The Candlebark trees present contain hollows which offer habitat for birds, possums and possibly Brush-tailed Phascogales. The Eltham-Plenty area is known to be a feeding site for Swift Parrot (endangered in Victoria and nationally) which move through the area during winter as they travel from Tasmania up the eastern side of Victoria. The subject site offers opportunistic foraging for the species but is not critical habitat. Large Yellow Box have been identified as being important feed trees.</p>

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Council Unit	Comments
	<p>A response to Clause 52.17 has been provided. As the proposal will result in the creation of three lots all less than 0.4ha in size, all native vegetation on site has been considered lost. Three large trees will be lost with the development.</p> <p>The building envelopes have been located in relatively cleared areas, although tree removal will be necessary within these envelopes. The land is sloping and so impacts on adjoining vegetation from excavation works is unavoidable.</p> <p>The response to Clause 52.17 has included all of the information required and this is satisfactory.</p> <p>The site is covered by Environmental Significance Overlay (Schedule 1) and impacts to local fauna and flora have been discussed in the ecological report. The proposal is unlikely to have any direct impact on threatened species known to occur in the area. The proposal will result in the loss of 0.352ha including 3 large trees. In this area this will reduce the overall available habitat for a range of species and reduce connectivity between patches of native vegetation. The proposal will result in the loss of several Candlebarks which are hollow-bearing and therefore reduce habitat for birds and possums utilising these for nesting. This in turn will reduce availability of food for Powerful Owls which are known to frequent the area.</p>
Environmental Health Unit	No objection to the subdivision. The proposed new lots will be connected to reticulated sewerage in the future

External

24. The application was referred to the following statutory referral authority/authorities for advice on particular matters. The following is a summary of the relevant advice:

Authority	Comments
AusNet	No objection
Melbourne Water	No objection
Yarra Valley Water	No objection
APA	No objection

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Planning assessment

Introduction

25. The following have been identified as the key planning issues in relation to the assessment of this planning application:
- Strategic Location;
 - Neighbourhood Character;
 - Vegetation removal and vegetation impacts;
 - Response Clause 52.17 (Native Vegetation) / Environmental Significance Overlay (Schedule 1);
 - Compliance with Clause 56 (ResCode);
 - Private Open Space Contribution; and
 - Bushfire
26. Assessment of these issues, together with a response to objections received, will be discussed in the remainder of this report.

Strategic Location:

27. The site is zoned Neighbourhood Residential (Schedule 1), which aims to manage and ensure that development respects the identified neighbourhood character, environmental and landscape characteristics, and to provide for limited housing growth.
28. The site is located approximately one kilometre (as the crow flies) from the Eltham train station, 800 metres from the Bridge Street Business Precinct to the south, approximately 550 metres to the nearest education facility (Sherbourne Primary School) and 600 metres from Catholic Ladies College to the south-east. The site is also located within walking distance (approximately 200 metres) of parkland to the north-west which links up to Malcolm Blair Reserve, and contains a number of recreational facilities. It is acknowledged that the site is not located within typical walking distance of these facilities due to the topography of the area, however the site is still appropriately serviced and is located within an area suitable for infill development.
29. The proposed lot sizes are much larger than typical medium density housing development lots and are more characteristic of residential lot sizes within Eltham that accommodate single dwellings. As such, any future development of these lots will be typical of infill suburban development. Given this, the proposal has policy support for some form of subdivision within this area.

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Neighbourhood Character:

30. The land is affected by the Significant Landscape Overlay (Schedule 2) which aims to provide for housing in a semi-bush setting, to provide for conservation and enhancement of the environmental values of the area and ensure that the development of land and the removal of native vegetation are not detrimental to the natural environment and character of the area. A large emphasis of the semi-bush setting (particularly the retention of native vegetation displayed within this area of Eltham) is due to lot size and allowing sufficient space around a dwelling for meaningful landscaping or existing tree retention to occur. This is further reinforced via the 'Semi-Bush' precinct at Clause 22.12 (Neighbourhood Character Policy) which focuses primarily on the retention of indigenous vegetation, including canopy trees and understorey and ensuring that development is responsive to the preferred future character of the area.
31. The surrounding area has varying lot sizes with examples of previous subdivision or second dwelling developments within 250 metres of the subject site. The development pattern in Warringah Crescent varies, with lot sizes ranging from 750 to 4,500 square metres.
32. The proposed lot sizes are appropriate in relation to the site's zoning. Of note is a decision made by the Victorian Civil and Administrative Tribunal in relation to a similar subdivision at 47 Warringah Crescent. In the matter of *Merrigan v Nillumbik SC VCAT 274*, in relation to the proposed lot sizes in the context of the zoning, neighbourhood character and lot sizes evident in the locality, the Tribunal noted:

"The zoning of the land is Neighbourhood Residential (NRZ1). It is an urban and a residential zone. It is planning objectives under this zone to recognise a predominance of single and two storey residential development, and for development to respect the identified neighbourhood character"

"The subdivision supports the purpose of the Neighbourhood Residential Zone (Schedule 7) by ensuring that future development facilitated by residential subdivision can respect the identified neighbourhood character of the area. The proposed subdivision can therefore respond appropriately to the objectives of Clause 22.12 (Neighbourhood Character Policy) and Clause 43.03 (Significant landscape Overlay – Schedule 2).

It is recognised that properties within this part of Eltham vary greatly in size. The existing site is well vegetated and can continue to retain trees even with future additional development resulting from this subdivision proposal. The proposal accommodates two additional lots without compromising canopy vegetation and is appropriate in the context of the prevailing development pattern of the area.

All lots can adequately connect to services within the area, including reticulated sewer to avoid the requirement for on-site wastewater treatment systems. The proposed subdivision also complies with the relevant objectives and standards of Clause 56 (ResCode).

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33. The above decision provides a policy basis that the proposed number of lots and the subsequent sizes are appropriate in a broader context in the zone subject to the application providing an appropriate response in terms of the existing neighbourhood character and the landscape outcomes sought in the planning scheme.
34. The proposal is considered to be appropriate in relation to the neighbourhood character outcomes sought by the Significant Landscape Overlay (Schedule 2) and the Neighbourhood Character Policy at Clause 22.12 as:
- In the context to the locality the proposed lot sizes are considered to be appropriate. The proposed lot sizes are undoubtedly smaller than the prevailing lot size in this section of Warringah Crescent, however the proposed lot sizes are sufficient to retain the existing and preferred neighbourhood character.
 - With regard to the above comments, the subdivision as proposed can accommodate additional lots without diminishing the existing tree canopy to a point where the existing character is compromised. The site's zoning supports the lot sizes as proposed, provided an appropriate response to the existing and preferred neighbourhood character is provided.
 - The appropriateness of the proposed vegetation removal will be discussed in a later section of this report, however the proposal will retain sufficient tree canopy on the site to achieve the landscape outcomes sought in this location.
 - Proposed lots 2 and 3 are to be located behind the existing dwelling at a setback of 40 meters from the site frontage. Due to the slope of the site and the retention of vegetation to the rear, side and front of the proposed building envelopes, future dwellings on the site will be able to sit below the existing vegetation canopy and will not become a dominant feature of the streetscape or landscape.
 - The application indicates that there are presently two points of vehicle access on Warringah Crescent, a third is proposed alongside the existing vehicle entrance to the existing dwelling. Council's Neighbourhood Character Policy seeks to ensure that car parking areas, garages and car ports do not dominate sites when viewed from the street and future design responses should minimise excavation, loss of front garden space and dominance of access driveway. The proposed vehicle access would be constructed adjacent to the existing vehicle access to the site at the north-west side of the site. The location of a vehicle access immediately adjacent to an existing vehicle access is not reflective of the existing pattern of vehicle access points in the street and would result in the vehicle access to lots 1 and 2 being a dominant feature within the streetscape.
 - It is practical for the access to lot 2 to be provided via the existing driveway on the site, which is proposed to be located on Lot 1. This will lessen the visual impact within the streetscape and will minimise any excavation required to provide vehicle access. In the event a planning permit is issued, a condition will require amended plans to show the proposed access for Lot 2 to utilise the existing driveway on the site as a common property area.

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Vegetation Removal and Vegetation Impacts:

35. The proposal seeks the removal of tree no's. 4. 5. 11. 12. 13. 18. 19. 20, 34, 45, 46, 47, 49, 62 & 63 under the Significant Landscape Overlay (Schedule 2), the Environmental Significance Overlay (Schedule 1) and Clause 52.17 (Native Vegetation).
36. The proposed works to construct the driveway to lot 3 and the proposed building envelopes will be in proximity to tree no's. 16, 17, 21, 55, 60, 64, 68. Tree no's. 64 & 68 are located on the adjoining property to the east of the site and tree no. 61, which is of high retention value, is located to the north-east of the proposed building envelope for lot 2.
37. Of the trees proposed to be removed, ten are classified as being of low retention value and five trees are classified as being of medium retention value. The proposed tree removal does not include the removal of any high retention vegetation.
38. The proposal is considered to have provided an appropriate response to the objectives contained within the relevant provisions as:
 - The proposal has sought to retain all high retention trees on the site. The proposed building envelopes have been designed around the location of tree no's. 24 & 51, which are located along the rear boundary of the site. The proposed driveway will likely be constructed within the Tree Protection Zone of tree no. 61. The submitted arboricultural report indicated that encroachment to the Tree Protection Zone of this tree should be restricted to 15% of the protection area, it is recommended that a notation will be included on any approval issued to show this.
 - The proposed driveway to lot 2 will be constructed within the Tree Protection Zone of tree no's. 64 and 68, which are located on the adjacent property. The submitted arborist assessment has indicated that the intrusion into the Tree Protection Zone to these trees should not exceed 10%. It is recommended that a notation will be included on any approval issued to show this. The above modification may result in some minor alterations to the proposed subdivisional boundaries, however these will be minor and will not significantly alter the proposed lot sizes.
 - Tree removal is not required on the road reserve to facilitate the proposed crossover to lot 3.
 - In the event a permit is issued, it is recommended that a Tree Management Plan is required as a condition of the permit which sets out the methodology to protect these trees pre-construction, during construction and post construction. It is also recommended that this plan demonstrates that services can be brought onto the site without being located within the Tree Protection Zone of any of the trees to be retained.

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- A majority of the trees proposed for removal have been assessed as low retention value, meaning the tree is in poor condition, or has a poor structure that cannot be remediated, or is considered to be a weed. The medium retention trees to be removed are assessed as not being significantly good examples or being of significant size or condition.
- The proposed lots are capable of accommodating an appropriate level of landscaping in the future. Future dwellings in these locations will require planning permission and it is considered appropriate to assess future landscape requirements at that stage. To ensure this occurs, it is recommended that a Section 173 agreement be required as a condition of any issuing permit that a landscape plan be submitted with any future development application and that the plans must be to the satisfaction of the Responsible Authority.
- In the event landscaping was carried out at subdivision stage and prior to any housing development, it is likely that it may be damaged / destroyed through the construction process and therefore have limited future value.

Response to Clause 52.17 (Native Vegetation) and the Environmental Significance Overlay (Schedule 1):

39. The proposed vegetation removal must be considered in relation to the objectives of the Environmental Significance Overlay (Schedule 1) and the three step approach outlined in Clause 52.17 – Native Vegetation and further outlined in *Guidelines for the removal, destruction or lopping of native vegetation* the objectives of the Environmental Significance Overlay.
40. In this instance, the removal of vegetation for the provision of a future dwelling location and driveway is unavoidable in the context of the three step approach outlined in Clause 52.17. The application has demonstrated that losses of vegetation to provide a future dwelling location have been appropriately minimised by retaining as much 'high' retention vegetation as possible.
41. Council's Environmental Planning officer and Consulting Arborist have both assessed the biodiversity and arborist assessment and consider that the requirements of Clause 52.17 (Native Vegetation) and the objectives of the Environmental Significance Overlay (Schedule 1) have been met as:
 - The applicant has provided all necessary information required to meet the requirements of Clause 52.17 and the Environmental Significance Overlay (Schedule 1).
 - Evidence that appropriate offsets can be obtained have been provided.
 - Council's Environmental Planning officer has noted that the site comprises a range of flora and fauna which will be reduced and will also fragment connection to other patches in the locality. Undoubtedly, the proposed subdivision will result in the loss of vegetation on the site and will have some impact flora and fauna. The biodiversity assessment has identified that the proposal will not have any direct impact on threatened species on the site.

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- Although the application will affect the movement of flora and fauna through the site, it is not considered this is at such a level that the proposal would be at odds with the objectives of the Environmental Significance Overlay (Schedule 1). The proposal will reduce the area available to fauna rather than remove it altogether.
- Overall the site will still maintain compliance with the objectives of the Environmental Significance Overlay (Schedule 1), largely due to the available area of remnant vegetation on the site (and adjoining sites) which will be maintained following the proposed subdivision.
- The trees assessed to be removed on the site have been assessed as being of low and medium retention value. Three trees have been assessed as having high retention value and are to be retained on the site. Retaining high retention trees ahead of trees of lesser value is an appropriate methodology.
- It is also recommended that in the event a permit is issued that a condition require a Section 173 Agreement containing obligations that no vegetation is to be removed that is located outside of an approved building or driveway envelope to ensure that the remaining habitat and landscape values are maintained into the future.

Clause 56 (Rescode):

42. A three lot subdivision must comply with 56.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2 of the Nillumbik Planning Scheme. These items are assessed below:
43. Clause 56.03-5 Neighbourhood Character Objective – As noted above, the proposed subdivision is considered to provide an appropriate response to the existing character as well as the neighbourhood character sought under Clause 22.12 (Neighbourhood Character Policy). The proposal is therefore considered to meet the objectives and standard of this clause.
44. Clause 56.04 Lot Design (56.04-2, 56.04-3 & 56.04-5) –The proposed building envelopes will be 479 & 460 square metres in size which is in excess of the 10 x 15 metre requirements. In accordance with Clause 56.04-3 the site has appropriate solar orientation. There is no common property proposed with this application, however common property is recommended to be created as a condition of any issuing permit for lots 1 & 2 to utilise the existing driveway located in lot 1.
45. Clause 56.06-8 Lot access – Access to the existing dwelling will be via the existing crossover to the north-west end of the site, the recommendations of this assessment as detailed above seek lots 1 and 2 to be accessed via the existing crossover on the site. Lot 3 will be accessed from the north-east end of the lot. Both crossovers and all driveways will allow vehicles to enter and exit the site in a safe and efficient manner.
46. Clause 56.07 Integrated Water Management (56.07-1 – 56.07-4) – reticulated drinking water and sewerage can be provided to the lots.
47. Clause 56.08 Site Management – A Tree Management Plan is required as a condition of any permit issued for the site. This will ensure the protection of trees retained on the site prior to, during and post construction.

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FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

48. Clause 56.09 Utilities (56.09-1 & 56.09-2) – The site can be provided with appropriate telecommunications, electricity and gas services.

Private Open Space Contribution:

49. Section 18 of the Subdivision Act 1988 allows Council to seek a contribution of up to 5% of the site value to contribute to open space improvements within the Municipality. Council's Open Space Strategy identifies that a three lot subdivision should provide for a 2% contribution under the Subdivision Act. This will be required as a planning permit condition.

Clause 13.02 – Bushfire:

50. In respect of Clause 13.02 (Bushfire), the site is designated as being 'bushfire prone'. Whilst vegetation plays an important role in the character of this area, the area is an established built up area with emergency services nearby and a multitude of options to leave the site in the event of an emergency. For this reason, the level of risk is considered low.

Response to objections received

51. The written objections have raised a number of concerns with respect to the proposed subdivision. Issues have been discussed in earlier sections of this assessment. A response to those issues not previously discussed and addressed is included below.

- The proposed subdivision does not respect the existing or preferred neighborhood character;

As noted in the above discussion, the proposed subdivision is considered to have provided an acceptable outcome in relation to the existing and preferred neighbourhood character. The proposed lot sizes are acceptable in relation to the site's zoning. The retention of existing vegetation on the site and the requirement for additional future landscaping will ensure the preferred neighbourhood character is maintained. It is expected that future dwellings on the site would sit amongst the existing vegetation canopy to the rear of the site and would not become a predominant feature of the landscape.

- The proposed subdivision will create a precedent for future subdivisions; and the intensity and scale of the proposal is not appropriate with regard to the existing area

The proposal has been considered in light of its location within a Neighbourhood Residential Zone. Previous decisions of the Victorian Civil and Administrative Tribunal have found that the proposed lot density is appropriate subject to an appropriate response being provided to the neighbourhood character sought in a particular location. The proposal has provided an acceptable response to the landscape outcomes sought in this location and the lot density is considered to be appropriate.

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The proposal does not necessarily provide a precedent for future development in any location, all planning applications must be assessed on their own individual planning merit. For instance, a three lot subdivision may be appropriate for this particular site but not for a property down the road by virtue of different site constraints.

- The proposed tree removal is not appropriate; and proposed tree removal will result in loss of habitat for birds and wildlife and will negatively impact the wildlife corridor;

As commented by Council's Environmental Planning officer, the application has satisfied the requirements of Clause 52.17 (Native Vegetation) in relation to proposed vegetation removal.

It is noted that the trees proposed for removal have been assessed as being of low / moderate retention value. The site will retain vegetation assessed as being of high retention.

It is acknowledged that the application will affect the movement of flora and fauna through the site, it is not considered this is at such a level that the proposal would be at odds with the objectives of the Environmental Significance Overlay (Schedule 1). The proposal will reduce the area available to fauna rather than remove it altogether. Overall the site will still maintain compliance with the objectives of the Environmental Significance Overlay (Schedule 1), largely due to the available area of remnant vegetation on the site (and adjoining sites) which will be maintained following the proposed subdivision.

- The submitted Ecology report indicates high retention large trees will be removed from the site:

The submitted Native Vegetation Report has assessed the proposal in relation to the guidelines contained within the Guidelines for the removal, destruction or lopping of native vegetation, the guidelines require that when a subdivision will result in lots less than 0.4 hectares in area, as is the case in this application, all vegetation on the site is considered to be lost. Although the trees are deemed as lost as assessed under the Native Vegetation guidelines, tree' no's. 40 & 51 are to be retained on the site.

- The existing road is not sealed and additional traffic will lead to deterioration of the road and create more dust for existing residents; and the additional traffic will create a hazard for vehicles entering and exiting an already blind bend on Warringah Crescent.

Council's Infrastructure Development unit have viewed the proposed application and have provided conditions in relation to vehicle crossovers and driveway construction. It is not expected that the traffic generated by two additional dwellings would result in a level of traffic which would be hazardous.

Vehicles will be able to enter and exit the site in a safe and efficient manner. It is also a recommendation of any permit issued on the site that vehicle access to lots 1 and 2 is consolidated into the one lot and common property created.

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FN.032/20 Three (3) Lot Subdivision and Removal of Native Vegetation at 26 Warringah Crescent, Eltham

Conclusion

52. The application seeks to subdivide the land into three lots, removal of native vegetation and buildings and works to construct a driveway. The application was advertised and 10 written objections were received. The key planning issues relate to:
- Strategic Location;
 - Neighbourhood Character;
 - Vegetation removal and vegetation impacts
 - Response to Clause 52.17 (Native Vegetation) and the Environmental Significance Overlay (Schedule 1);
 - Compliance with Clause 56 (ResCode);
 - Private Open Space Contribution; and
 - Bushfire
53. The proposed subdivision supports the purpose of the Neighbourhood Residential Zone (Schedule 1) by ensuring that future development facilitated by residential subdivision can respect the identified neighbourhood character of the area. The proposed subdivision can therefore respond appropriately to the objectives of Clause 22.12 (Neighbourhood Character Policy) and Clause 43.03 Significant Landscape Overlay (Schedule 2).
54. It is recognised that properties within this part of Eltham vary greatly in size. The existing site is well vegetated and can continue to retain trees even with future additional development resulting from this subdivision proposal. The proposal accommodates two additional lots without compromising high retention canopy vegetation and is considered to be appropriate in the context of the prevailing development pattern of the area.
55. All lots can adequately connect to services within the area, including reticulated sewer to avoid the requirement for on-site wastewater treatment systems. The proposed subdivision also complies with the relevant objectives and standards of Clause 56 (ResCode).
56. In light of the above planning assessment, the application warrants support, as reflected in the officer recommendation.

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6. Officers' reports

FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

Portfolio: Planning

Distribution: Public

Manager: Rosa Zouzoulas, Executive Manager Planning and Community Safety

Author: Briana Barnes, Statutory Planner

Application summary

Address of the land	8 Bird Street, Eltham
Site area	1,733 square metres
Proposal	Two (2) lot subdivision
Application number	218/2020/14P
Date lodged	19 May 2020
Applicant	Fotini Georgakopoulos
Zoning	Neighbourhood Residential Zone (Schedule 1)
Overlay(s)	Significant Landscape Overlay (Schedule 2)
Reason for being reported	Called in by Ward Councillor.
Number of objections	Nine (9)
Key issues	<ul style="list-style-type: none"> • Strategic location • Neighbourhood Character • Compliance with Clause 56 (Residential Subdivision) • Car parking • Tree impacts • Public Open Space Contribution

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FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

Location map



6. Officers' Report

FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

Recommendation

That the Committee (under delegation from Council) issue a Notice of Decision to Grant a Permit to the land located at 8 Bird Street, Eltham, for the subdivision of land into two (2) lots, in accordance with the submitted plans and subject to the following conditions:

1. Before the plan of subdivision is certified under the Subdivision Act 1988, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by J&M Designs, but modified to show:
 - a) The building envelope for lot 2 deleted.
 - b) The three trees proposed in the proposed easement deleted.
 - c) All reference to proposed paling fence to be deleted.
 - d) The proposed street tree to be deleted.
 - e) A landscape plan per Condition 2.
 - f) Building exclusion zones as per Condition 2 j).
 - g) A notation that all services that are to be located in proposed easement E-1 and located within a Tree Protection Zone of any third-party trees, must be installed by directional boring with the top of bore to have a minimum depth of 600mm.
 - h) Easement E-1 be vested in favour of Nillumbik Shire Council.
2. Before the plan of subdivision is certified under the Subdivision Act 1988, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The plan must show:
 - a) A survey of all existing vegetation and natural features;
 - b) The area or areas set aside for landscaping on each lot;
 - c) A schedule of all proposed trees, shrubs/small trees and ground cover. This schedule shall include a mixture of exotic plants and plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing;
 - d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
 - e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill;
 - f) Appropriate irrigation systems;
 - g) The provision of two indigenous Eucalypt species canopy trees with a minimum mature growth height of 10 metres within the frontage of proposed lot 1;

6. Officers' Report

FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

-
- h) The provision of one indigenous Eucalypt species canopy tree with a minimum mature growth height of 6 metres within the rear of proposed lot 1.
- i) The provision of three indigenous Eucalypt species canopy trees with a minimum mature growth height of 10 metres within proposed lot 2;
- j) Building exclusion zones shown around the three proposed trees for lot 2 within a minimum radius of 2 metres from the base of the tree.
3. The subdivision as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
4. Prior to the issue of a Statement of Compliance, the landscaping in accordance with Condition 2 must be carried out, completed and maintained thereafter, to the satisfaction of the Responsible Authority.
5. Prior to the issue of a Statement of Compliance, the owner must enter into an agreement with the Responsible Authority in accordance with Section 173 Agreement of the Planning and Environment Act 1987. The agreement must provide for:
- Unless with the prior written consent of the Responsible Authority:
- a) The canopy trees shown on the endorsed plans must not be removed, destroyed or lopped.
- b) Building exclusion zones established around the three (3) canopy trees to be planted on lot 2, with a minimum radius of 2 metres from the base of the tree.
- c) No buildings and works are to occur within any of the approved building exclusion zones as shown on the endorsed plans.
- d) Prior to the commencement of any future buildings and works on lot 2:
- i. Trees located within any Building Exclusion Zone must be provided with Tree Protection Fencing to the extent of the approved Building Exclusion Zone, to the satisfaction of the Responsible Authority.
 - ii. The tree protection fencing must be erected to the satisfaction of the Responsible Authority in accordance with the approved Building Exclusion Zone. The tree protection fencing shall be maintained in good condition until the completion of the construction works on the site, to the satisfaction of the Responsible Authority.
 - iii. Each tree protection fence shall be constructed of temporary fencing approved by the Responsible Authority and erected to a height of 1.5 metres above ground level around the Tree Protection Zone and clearly signed "Building Exclusion Zone – No Entry" on all sides, to the satisfaction of the Responsible Authority.
 - iv. Once the Tree Protection Fencing is erected the permit holder/landowner provide a report and photographic evidence to Council stating the fences comply. Once erected to the required standard, the tree protection fencing shall be maintained in good

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FN.033/20 Two (2) Lot Subdivision at 8 Bird Street, Eltham

condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.

- v. The following actions must not be undertaken in any Building Exclusion Zone as identified on the endorsed plan, to the satisfaction of the Responsible Authority:
 - Materials or equipment stored within the zone;
 - Attachment of anything to any tree (including temporary service wires, nails, screws or any other fixing device);
 - Open cut trenching or excavation works (whether or not for laying of services) undertaken within the zone;
 - Changes to the soil/surface level within the zone.
- vi. The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.
- vii. Any works entailing the use of excavation equipment wheeled or tracked must be supervised by the project arborist where it occurs within the Tree Protection Zones of the trees to be retained to the satisfaction of the Responsible Authority.
- viii. Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act prior to the issue of the Statement of Compliance.

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.

6. Prior to Council issuing a Statement of Compliance for the subdivision, the permit holder must pay to Council a 4% cash-in-lieu open space contribution in respect to all of the land in the subdivision pursuant to Section 18 of the Subdivision Act.
7. Unless with the prior written consent of the Responsible Authority, all services that are to be located in proposed easement E-1 and located within a Tree Protection Zone of any third-party trees, must be installed by directional boring with the top of bore to have a minimum depth of 600mm, to the satisfaction of the Responsible Authority.
8. Stormwater drainage works are to be constructed to provide a legal point of stormwater discharge for both lots, at no cost to Council, and must be carried out under Council supervision, in accordance with the approved plans and Council's

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specifications and must be carried out under Council supervision and an Infrastructure Works permit.

9. On site detention must be provided to the existing dwelling located on Proposed Lot 1. The on-site detention device shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval (prior to the commencement of the development unless with the prior written consent of the Responsible Authority).

The engineer that is designing the on-site detention device must obtain tc and tso figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event. Please note there will be a fee associated with the Plan Checking and Supervision, of 3.25% of the detention drainage system cost.

10. No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property during the construction of the development.

In this regard, sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.

11. Prior to the issue of a Statement of Compliance, the on-site detention device must be installed, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge.

Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works permit.

12. Prior to the issue of a Statement of Compliance, vehicular access and egress to the development site from the roadway must be by way of vehicle crossings constructed to the requirements of the Responsible Authority, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an *Infrastructure Works* permit.

The width of the driveway at the property boundary must match the width of the vehicle crossing.

13. The owner of the land must enter into an agreement with:

- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and

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- b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
14. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
15. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
16. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
17. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.
18. This permit will expire if one of the following circumstances applies:
- a) A plan of subdivision is not certified within two years of the issue date of this permit; or
- b) A plan of subdivision is not registered at Land Victoria within five years of the original certification date.
- The Responsible Authority may extend the permit if a request is made in writing prior to expiry of the permit or within six months afterwards.

Attachments

1. Aerial map
2. Site and surrounds
3. Plans - 8 Bird Street Eltham
4. Planning report and Clause 56 assessment

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Subject site and surrounds

1. The key features of the subject land and surrounds are as follows:
 - The subject site is particularly described as Lot 1 on Title Plan 514519D.
 - The site is located on the southern side of Bird Street.
 - The site is rectangular in shape and measures 1,733 square metres in area.
 - The site has a width of approximately 17.33 metres and a depth of approximately 100.58 metres.
 - The site has a fall from the frontage to the rear of the property of approximately 15 metres.
 - The site contains a single storey detached weatherboard dwelling, setback 5.92 metres from the front property boundary.
 - The site does not contain any native vegetation or substantial trees.
 - The site has a timber paling fencing along the western, southern and eastern boundaries.
 - The site has an existing crossover located centrally on the property frontage.
 - The surrounding area contains a mix of residential densities. The immediate site to the east was a similar shaped parcel to the subject site, and contains five dwellings, on lots ranging from 175 to 600 square metres in area. The property to the west has a similar layout to what is proposed for this application, with a battle axe arrangement containing two dwellings.
 - The properties to the north of the site on the other side of Bird Street contain single or double storey detached dwellings, setback from the street on lots between 700 – 800 square metres in area. The property at 3 Bird Street diagonally across from the subject site is currently vacant but does have approval for the construction of two dwellings.
 - The properties to the north of the site on the other side of Bird Street contain single or double storey detached dwellings, setback from the street on lots between 700 and 800 square metres in area. The property at number 3 Bird Street, diagonally across from the subject site, is currently vacant but does have approval for the construction of two dwellings.
 - The properties to the south of the subject site form the end of a cul-de-sac, are irregular in shape, and contain single detached dwellings. These lots range in size from 500 to 1100 square metres in area.
 - The site is located approximately 700 metres from the Eltham train station, 500 metres from the Bridge Street Business Precinct to the south, and approximately 500 metres from Catholic Ladies College to the north-east as the crow flies.

Details of proposal

2. Refer to the attached plans.
3. Key features of the proposal include:

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- To subdivide the land into two lots.
- Lot 1 is proposed to measure 332 square metres in area and will contain the existing dwelling on the site. A new 3 metre wide crossover to Bird Street on the eastern side of the property frontage is proposed to provide vehicular access to this lot.
- Lot 2 is proposed to measure 1,401 square metres in area and will be vacant of any built form. A new 4 metre wide crossover to Bird Street on the western side of the property frontage is proposed to provide vehicular access to this lot.
- It is proposed to remove and reinstate the existing crossover.
- A 3 metre wide easement is proposed to run along the internal western boundary of proposed lot 2 for the provision of drainage and sewer infrastructure.

Planning history

4. Planning Permit 253/2020/VS02 was issued in June 2020 for the removal of one tree.
5. Planning Investigation 55/2020/02E was undertaken to investigate the alleged illegal removal of native vegetation. This breach is being dealt with concurrently with this application. A Planning Infringement Notice was issued for the breach and the owner has volunteered to plant three trees to remediate the one tree that was removed. This correlates to the recommended conditions 2)i), should Council resolve to issue a permit.
6. Planning Permit application 308/2018/03P was applied for the construction of 5 dwellings, associated vegetation removal and reduction of visitor car parking. This application lapsed on 16 May 2019.

Planning controls

Zoning

7. The subject land is zoned Neighbourhood Residential Zone (Schedule 1). Under this zone, a permit is required to subdivide land.

Overlays

8. The subject land is zoned Significant Landscape Overlay (Schedule 2). Under this zone, a permit is not required to subdivide land.

Particular provisions

9. Clause 52.06 (Car Parking) applies to the application. This clause seeks to ensure there is the provision of an appropriate number of car parking spaces; that car parking does not adversely affect the amenity of the locality; and that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.
10. Residential subdivision must meet the relevant requirements of Clause 56 (commonly known as 'ResCode'). The requirements of what clauses need to be met are outlined under Clause 32.09 Neighbourhood Residential Zone of the Nillumbik Planning Scheme.

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11. Clause 65 (Decision Guidelines) outlines general decision guidelines that must be considered when assessing an application. These guidelines include the purpose of the zone or other provision, the orderly planning of the area, and the effect on the amenity of the area.

Relevant planning policies

12. Planning Policies which are relevant to this application include:

- Clause 15.01-3S – Subdivision design
- Clause 19.03-3S – Integrated water management

13. The Local Planning Policies which are relevant to this application include:

- Clause 21.05-1 – Settlement and Housing
- Clause 22.12 – Neighbourhood Character Policy

Policy context

14. The planning controls and policies identified above encourage residential development in urban areas at a range of densities. This intent is also reflected specifically in the purpose of the zone. However, in both the Planning Policy Framework and Local Planning Policy, the strength of encouragement for increasing housing densities and corresponding subdivision is greater the closer the site is located to an activity centre or other commercial and community facilities, and reduces the further the site is located from necessary urban infrastructure.

Public consultation

Advertising

15. The application has been advertised by way of the posting of notices to the owners and occupiers of neighbouring properties and the erection of a notice on-site.

Objections

16. As a result of advertising, a total of nine (9) written objections have been received. These objections can be summarised as follows:
- The subdivision will detrimentally impact the neighbourhood character.
 - There are concerns about the recent tree removal.
 - The subdivision will increase in car movements.
 - The subdivision will result in a lack of on street car parking.
 - There are concerns about proposed location of easement for sewer and drainage services and flow on effects from this, and for future development.
 - The subdivision will result in an overdevelopment of the site.
 - The subdivision will result in detrimental amenity issues.
 - The subdivision will result in noise, dust, erosion and light spill.
 - The subdivision will compromise neighbours' privacy.

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- The subdivision is not in keeping with the 'Green Wedge'
- Anomalies in the application documentation including different owners and references to other properties in the planning report submitted.

Planning application conference

17. No planning application conference was held for this application as the application was called in for a decision to be made by Council before the advertising period concluded and due to the current State of Emergency in effect.

Referrals

Internal

18. The application was referred to various business units or individuals within Council for advice on particular matters. The following is a summary of the relevant advice:

Council Unit	Comments
Infrastructure Department	<p><u>12 June 2020</u></p> <p>No objection subject to vehicle crossing, stormwater drainage construction, on-site detention unit design, on site unit construction and runoff control conditions.</p> <p><u>3 September 2020</u></p> <p>Regarding the on street parking, with the existing crossover central within the site, there is limited opportunity for on street parking. The proposed configuration with 9m between the crossovers provides the opportunity for at least 1 safe on street parking.</p>

External

19. There are no external referral authorities relevant to this application.

Planning assessment

Introduction

20. The following have been identified as the key planning issues in relation to the assessment of this planning application:

- Strategic location (in the context of policy)
- Neighbourhood Character
- Compliance with Clause 56 (Residential Subdivision)
- Car parking
- Tree impacts
- Public Open Space Contribution

21. Assessment of these issues, together with a response to objections received, will be discussed in the remainder of this report.

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Strategic location (in the context of policy)

22. The site is zoned Neighbourhood Residential, which aims to manage and ensure that development respects the identified neighbourhood character, environmental and landscape characteristics, and to provide for limited housing growth.
23. The site is located approximately 700 metres from the Eltham train station, 500 metres from the Bridge Street Business Precinct to the south, and approximately 500 metres from Catholic Ladies College to the north-east. The site is located within walking distance to Alastair Knox Park and Eltham Football Ground. It is acknowledged that the site is not located within typical walking distance of these facilities due to the topography of the area, however the site is still appropriately serviced and is located within an area suitable for infill development. The proposed lot sizes are varying but are typical for the lot sizes seen in this area. As such, any future development of these lots will be typical of infill suburban development. Given this, the proposal has some support for some form of subdivision within this area.

Neighbourhood Character

24. The land is affected by the Significant Landscape Overlay (Schedule 2) which aims to provide for housing in a semi-bush setting, to provide for conservation and enhancement of the environmental values of the area and ensure that the development of land the removal of native vegetation are not detrimental to the natural environment and character of the area. A large emphasis of the semi-bush setting is due to lot size and allowing sufficient space around a dwelling for meaningful landscaping or existing tree retention to occur. This is further reinforced via the 'Semi-Bush' precinct at Clause 22.12 Neighbourhood Character Policy which focuses primarily on the retention of indigenous vegetation, including canopy trees and understorey and ensuring the development is responsive to the preferred character of the area. Subdivisions in these areas should be respectful of the surrounding landscape values of the area.
25. The surrounding area has varying lot sizes with examples of previous subdivision or second dwelling developments within 250 metres from the site. The development pattern in Bird Street varies with lot sizes ranging from 180 square metres to 800 square metres, and includes varying lot sizes and types of development such as multi dwellings, second dwelling developments and single dwelling developments. The proposed lot sizes are not dissimilar to those in the surrounding area and broader neighbourhood, given the varying lot sizes that are present.
26. When the application was lodged, Lot 1 was proposed to be 300 square metres in area. Through issues raised, this lot was increased in size to 332 square metres, to provide additional space for a canopy tree to the rear of the dwelling. Due to the increase in the lot size and the subsequent increase in private open space and the ability to provide a canopy tree in the rear setback, it is considered that Lot 1's proposed land size is considered acceptable. Proposed Lot 2 is of a significant size and will easily accommodate future landscaping consistent with the outcomes sought in Clause 22.12.

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27. The front setback to the existing dwelling in proposed lot 1 will remain at 5.92 metres. One canopy tree is proposed to be planted in this frontage, however it is recommended that should a permit issue, a permit condition require a landscape plan to provide further additional landscaping including two large canopy trees to be provided in front of the existing dwelling on proposed lot 1, and a medium size tree to be included in the rear of proposed lot 1 to ensure the site establishes the desired character set out in Clause 22.12 (Neighbourhood Character Policy). The landscaping plan will also request a mix of shrubs and groundcovers to achieve a good landscaping outcome for the site.
28. Lot 2 is proposed to be 1401 square metres in area. This lot will be larger than lots typically seen in Bird Street and the surrounding area and will provide ample opportunity for landscaping and to meet the objectives as set out in Clause 22.12 (Neighbourhood Character Policy). The applicant has indicated there will be ten trees planted on this site, with three of these ten proposed to be planted within the proposed easement. For orderly planning purposes, it is recommended that if a permit issues, a condition be included that deletes the three canopy trees proposed to be planted within the easement, leaving seven trees proposed to be planted on site. To leave these seven (7) trees on the site would leave the lot somewhat undevelopable given the space utilised to accommodate the trees. Therefore it is recommended that should a permit issue, a condition be included to require the number of trees on this lot to three (3), prior to the issue of a Statement of Compliance.
29. This, over time, will still result in a good outcome for this lot; however it ensures that the infrastructure contained within the easement won't be damaged by future root growth. To ensure this landscaping is achieved, it is also recommended that, should a permit issue, a permit condition require a Section 173 Agreement for building exclusion zones to be included around the three (3) indigenous trees proposed to be planted. This will ensure that the prevailing neighbourhood character of canopy trees is protected and maintained into the future, and will be protected when the vacant lot is developed in the future. This also remediates the unlawful removal of one substantial tree.
30. Although the proponent has indicated a large building envelope on proposed lot 2, it is recommended that the building envelope be deleted though a permit condition, in the event that a permit is issued. The lot is large enough in size to accommodate a dwelling. Any further development will be subject to planning approval as a planning permit is required for a new dwelling subject to the Significant Landscape Overlay (Schedule 2) which applies to the site. As such, the built form outcome will be managed through any future application and it is not considered necessary to include a large building envelope on this lot.
31. Numerous objections were raised with regards to how this proposal is not in keeping with the character of the area. As discussed previously, the prevailing neighbourhood character is varied in both housing style and lot sizes, however large canopy trees are a consistent feature. The lot sizes proposed will allow for meaningful landscaping that will contribute to the character of the area. The proposal will result in a suitable outcome for the area when considering the exiting neighbourhood character.

Compliance with Clause 56 (Residential Subdivision)

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32. The subdivision must meet the requirements of Clause 56 (Residential subdivision). For a two lot subdivision, the proposal must meet the requirements of Clauses 53.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2. The proposed subdivision complies with the objectives and measures of Clause 56 as per the following:

Clause 56 requirements	Response
Clause 53.03-5 C6 (Neighbourhood character objective)	The two lot subdivision has been designed to respect Neighbourhood Character, specifically the 'Semi-Bush' precinct of Clause 22.12 (Neighbourhood Character Policy). The subdivision layout is in keeping with the varied pattern of development of the area and will result in appropriately sized lots for infill development.
Clause 56.04-2 C8 (Lot area and building envelopes)	Lot 2 can provide for a 10m x 15m building envelope. Although a large building envelope has been provided on the plans, due to the lot size being large, a condition will be placed on the permit to delete reference to this building envelope.
Clause 56.04-3 C9 (Solar orientation to lots)	The site is orientated in a way that will allow for future dwelling/s to maximise solar orientation.
Clause 56.04-5 C11 (Common area)	No common area is proposed.
Clause 56.06-8 C21 (Lot access)	Conditions of the any permit issued for the subdivision will require the access arrangements for each lot to be constructed in accordance with the endorsed plans. Council's Infrastructure Department is satisfied the access to all lots is acceptable and will allow for safe vehicle movements exiting and entering the site.
Clause 56.07-1 C22 (Drinking water supply)	The subject site will be connected to potable water services.
Clause 56.07-2 C23 (Reused and recycled water objective)	Recycled water will not be provided to each lot through this subdivision.
Clause 56.07-3 C24 (Wastewater management)	A condition will be placed on the permit to ensure wastewater is treated in accordance with the relevant authority's requirements.

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Clause 56 requirements	Response
Clause 56.07-4 C25 (Urban run-off management)	Council's Infrastructure Department has provided conditions for stormwater management. Lot 1 will be required to provide a detention system for stormwater. Stormwater drainage infrastructure will be provided for lot 2 at the time of any future development.
Clause 56.08-1 C26 (Site management)	The proposed works required for the subdivision are relatively minor and are generally confined to the access for Lot 2 and the new crossover for Lot 1. The main consideration of these will be getting the necessary approvals from the Infrastructure Department for these works.
Clause 56.09-1 C27 (Shared trenching)	The site will maximise shared trenching, particularly with regarding to the drainage and sewer infrastructure proposed along the western internal boundary of the site.
Clause 56.09-2 C28 (Electricity)	All services will be provided to the lots in consultation with the relevant authorities.

Car Parking

33. The application proposes to remove and make good the existing crossover, and construct two new crossovers, 3 metres and 4 metres wide respectively, to provide individual access to each lot. By relocating the crossovers, the area within the road reserve between the two crossovers will now provide enough space for one car parking space in the road reserve. Previously as the existing crossover was located centrally on site, was at a width of approximately 4 metres, and as the adjoining property's crossovers are located immediately next to the shared property boundaries, there was inadequate space each side of the existing crossover to provide for any on street car parking. Therefore, by removing the existing crossover and providing a new crossover for each lot, the ability to park in the road reserve will increase by one car parking space within the street.
34. In addition to this, the existing dwelling on proposed lot 1 can accommodate the two required car parking spaces in a tandem manner as per Clause 52.06. Therefore, it is expected cars for this dwelling will park on site, rather than on the street. Lot 2 also has ample space to provide for car parking for any future development.
35. Numerous objections were raised about the issue of this subdivision impacting on street car parking. Considering that as a result of relocating the crossovers, an additional on street car parking space will be created, and that each lot can accommodate car parking on site per the requirements of Clause 52.06, it is considered the proposal is acceptable when assessed against the car parking requirements of the Nillumbik Planning Scheme.

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Tree impacts

36. Although there are no trees on the subject site, consideration must be given to any third party trees. It is proposed to create an easement along the internal western boundary of the site, for the provision of drainage and sewer infrastructure. There are several *Cupressus Marrocarpa*, *Pittosporum*, *Photinea* and *Lophostemon* on the property at 6 Bird Street, and the Tree Protection Zones for these trees fall within the proposed easement at 8 Bird Street. A condition is recommended to be placed on any permit issued that any drainage and sewerage infrastructure within the Tree Protection Zones of these trees is to be bored, with the top of bore having a minimum depth of 600mm when located within the Tree Protection Zone of any third party trees. This will ensure that these trees are protected from any development impacts.

Public Open Space Contribution

37. With regards to the requirement for a contribution to public open space, Council is requiring a public open space contribution be made at this time. Council has an Open Space policy that depicts what % contribution of the land value should be made. In this instance, a 4% contribution is required. A condition to this effect is recommended to be included on the permit, should a permit be issued.

Response to objections received

38. The written objections have raised a number of concerns with respect to the proposed development. Issues regarding detriment to neighbourhood character and on street car parking have been discussed in earlier sections of this assessment. A response to those issues not previously discussed and addressed is included below.

Recent tree removal

39. In April of this year, a number of trees were removed from the site. All but one tree was exempt from needing a planning permit under the provisions at Clause 52.12 Bushfire Exemptions of the Nillumbik Planning Scheme. It is noted that following Amendment VC167 that was gazetted on 5 August 2020, this site is no longer able to use this exemption as it is not within a Bushfire Management Overlay or is it in a Bushfire Prone Area. Nonetheless, at the time that the vegetation was removed, this exemption was legally able to be used on this site.

The owner has voluntarily agreed to plant three trees to remediate the one tree that was removed illegally. A Section 173 Agreement will be entered into to protect these three trees for the future, and so they can grow to their full potential.

Increase in car movements

40. The application was referred to Council's Infrastructure Department who have not identified concerns regarding traffic or an increase in car movements. The subdivision itself will not result in additional car movements, however there will be additional car movements to and from the site when the rear lot is eventually developed. Even so, it is not expected that at this time there will be any excessive noise or traffic problems within the area. The proposed lots are also of a size where on-site car parking can be accommodated appropriately.

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Location of easement and flow on effects from future development

41. The infrastructure within the proposed easements will be constructed to the standards of Council and the other relevant authorities. The location of the easement is considered to be satisfactory and provides for the orderly planning of the area. Any further development of the site may require additional upgrades to the infrastructure however this this will be determined at the time of any future development application.

Overdevelopment

42. With regards to the objection raised about the potential overdevelopment of the site, the proposed vacant lot does not propose any built form. A vacant lot 1,400 square metres in a residential zone is not considered to be an overdevelopment of the land.

Amenity, noise, dust, erosion and light spill

43. The proposed subdivision may result in some noise and dust during the construction of the crossovers and installation of services, however the creation of a new lot is unlikely to have any ongoing impact to adjoining residents with regards to noise, dust, erosion and light spill as there is no development proposed as a part of this application.

Loss of privacy

44. In relation to the issues raised that the subdivision of land and future dwellings will result in a loss of privacy to surrounding lots, this application is for subdivision only and any overlooking will need to be addressed at the time of any future planning or building permit application (as relevant).

Not in keeping with the 'green wedge'

45. Within Nillumbik Shire Council, the 'Green Wedge' refers to all non-urban land. As this site is within an urban zone and inside the Urban Growth Boundary, the reference to not being in keeping with the 'green wedge' is one that cannot be considered.

Anomalies in the application documentation

46. When the application was lodged, the landowner at the time was 'Bird Street 03 Pty Ltd'. Prior to advertising this application, the applicant contact informed Council that the landowner had changed to Fotini Georgakapolous, and provided an updated copy of title detailing the owner change. The application form was not updated to reflect the new owner, hence why when the application was advertised, the owner listed on the application form was not the same owner as shown on the updated copy of title. It is common for properties to change ownership when a planning permit application is being assessed by Council. The change in owner is of no consequence to Council's decision making when assessing the two lot subdivision.

Issues were also raised by objectors about errors in the planning report provided by the applicant that referred to other properties rather than this site. It appears that this is an administrative error from the author of the planning report and is of no consequence to Council's decision making when assessing the two lot subdivision.

Conclusion

47. The application seeks to subdivide the land into two lots. The application was advertised and nine (9) written objections were received. The key planning issues

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relate to strategic location in the context of policy, neighbourhood character, and compliance with Clause 56, car parking, and tree impacts.

48. The proposed subdivision supports the purpose of the Neighbourhood Residential Zone (Schedule 1) by ensuring that future development facilitated by residential subdivision can respect the identified neighbourhood character of the area. The proposed subdivision can therefore respond appropriately to the objectives of Clause 22.12 (Neighbourhood Character Policy).
49. It is recognised that properties within this part of Eltham vary in size. The proposed subdivision is in keeping with the broader subdivision pattern in the area, and will facilitate residential development that is in keeping with the prevailing development pattern of the area.
50. Each lot can provide the necessary car parking spaces as required, and an additional on street car parking space will be created by the relocation of the crossover. The land is also adequately connect to all required services.
51. The proposed subdivision complies with the relevant objectives and standards of Clause 56 (ResCode).
52. In light of the above planning assessment, the application warrants support, as reflected in the officer recommendation.

- 7. Supplementary and urgent business**
- 8. Confidential reports**